Rule 51.315(c)(f) because: (1) the Commission did not appeal the Eighth Circuit's ruling vacating Rule 51.315(c)-(f); (2) the nondiscrimination requirement in Section 251(c)(3) of the 1996 Act does not require ILECs to provide access to "service or facilities that ILECs do not provide for themselves;" and (3) Rule 51.315(c)-(f) would not meet the "impair" standard because substitutes are available for "many of the combinations of interest to CLECs." 215/

GTE's reasoning is flawed. First, while the Commission did not appeal the ruling vacating Rule 51.315(c)-(f), the Eighth Circuit's rationale for vacating the rule is no longer valid in light of the Supreme Court's decision in AT&T v. Iowa Utilities Board. 216/ The Court also rejected the ILECs' arguments that Section 251(c)(3) requires ILECs to provide competitors with network elements only in their physically separated form. 217/ The Court's reasoning in upholding Rule 51.315(b) applies equally to Rule 51.315(c)-(f). 218/

215/ GTE Comments at 84-85. No other RBOCs appeared specifically to address the Rule 51.315(c)-(f) issue.

216/ AT&T v. Iowa Utilities Board, 119 S.Ct. at 736-38.

217/ Id. at 738.

218/ As stated in our initial comments, at least one state decisionmaker agrees with this view. Rulemaking on the Commission's Own Motion to Govern Open Access to Bottleneck Services and Establish a Framework for Network Architecture Development of Dominant Carrier Networks, Investigation on the Commission's Own Motion into Open Access and Network Architecture Development of Dominant Carrier Networks, Docket No. R93-04-003, I93-04-002, Proposed Decision of ALJ McKenzie: Interim Decision Setting Final Prices for Network Elements Offered by Pacific Bell (California Public Utilities Commission May 10, 1999), at 12-13 ("the Supreme Court's decision clearly reinstates FCC Rule 315(b) -- and does so with reasoning that seems to apply to FCC Rules 315(c)-(f) as well . . . ").

The FCC has ample statutory authority, moreover, to reinstate Rule 51.315(c)-(f) pursuant to its Section 201(b) rulemaking authority. **219/** The Supreme Court confirmed the expansive scope of the Commission's Section 201(b) authority in AT&T v. Iowa Utilities Board, holding that the Commission's Section 201(b) power was broad enough to encompass the adoption of comprehensive local competition rules that are binding on state commissions. **220/**

Second, contrary to GTE's claims, the nondiscrimination requirement of Section 251(c)(3) *does* require reinstatement of Rule 51.315(c)-(f). **221/** Without Rule 51.315(c)-(f), the ILECs would be able to act in a discriminatory manner, combining elements for themselves but not for other carriers. **222/** Refusing to combine elements for CLECs, moreover, would impose unnecessary and substantial costs on CLECs, costs that the ILEC itself does not have to bear, for no other reason than to deter their ability to use ILEC network elements in combination.

In addition, it should be noted that much of the Eighth Circuit's reasoning when it vacated Rule 51.315(c)-(f) was based on its understanding that the ILECs would rather give CLECs access to their networks in order to combine

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219/ 47 U.S.C. § 201(b).

220/ AT&T v. Iowa Utilities Board, 119 S.Ct. at 729-33.

221/ 47 U.S.C. § 251(c)(3).

222/ See AT&T v. Iowa Utilities Board, 119 S.Ct. at 738 (finding that Rule 51.315(b) finds its basis in the nondiscrimination requirements of Section 251(c)(3)).

network elements themselves, than combine network elements for CLECs. 223/ It has since become clear, however, that the ILECs do not want to give CLECs direct access to their networks in order to combine network elements. The ILECs cannot have their cake and eat it too. If the ILECs do not want to give CLECs direct access to the ILECs' networks, they must provide CLECs with combinations of network elements, regardless of whether or not the ILEC ordinarily combines those network elements in its network.

Third, the Section 251(d)(2) "impair" standard is relevant to Rule 51.315(c)-(f) only to the extent that it would prevent a CLEC from obtaining access to a particular ILEC network element. In other words, the "impair" standard is relevant only to determining "what network elements should be made available. . .," 224/ not to the manner in which they must be made available. Moreover, even if the "impair" standard were relevant, we have made clear above that no alternatively-supplied network elements are yet substitutable for -- or interchangeable with -- ILEC UNEs. Thus, it goes without saying that no alternatively-supplied substitutes are available for *any* of the UNE combinations needed by CLECs.

223/ Iowa Utilities Board v. FCC, 120 F.3d 753, 813 (8th Cir. 1997), rev'd in part and aff'd in part, AT&T v. Iowa Utilities Board, 119 S.Ct. 721 ("the fact that the incumbent LECs object to [Rule 51.315(c)-(f)] indicates to us that they would rather allow entrants access to their networks than have to rebundle the unbundled elements for them").

224/ 47 U.S.C. § 251(d)(2).

In sum, whether or not the Eighth Circuit grants pending motions to remand Rule 51.315(c)-(f) to the Commission, the Commission should re-adopt the requirement embodied in that rule that the ILECs must combine network elements for requesting CLECs.

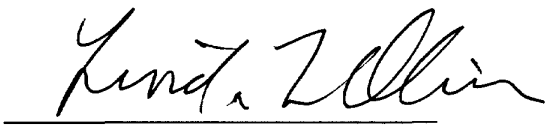
In addition, the Commission should make clear, in Rule 51.311, that ILECs are required to provide CLECs with access to the same equipment and facilities that ILECs use themselves to combine network elements. (This proposed requirement is set forth in CompTel Proposed Rule 51.311(e) attached to Qwest's Initial Comments.) If CLECs choose to combine themselves the network elements that are not already combined in the ILEC network (rather than asking the ILEC to do it), then CLECs must have access to the same equipment and facilities that the ILECs use in order to accomplish that combining. This requirement is mandated by the nondiscrimination mandates in Section 251(c)(3) and by the Section 251(c)(3) requirement that ILECs provide "unbundled network elements in a manner that allows requesting carriers to combine such elements . . . ." 225/

225/ 47 U.S.C. § 251(c)(3).

CONCLUSION

For the reasons given, the Commission should adopt the wholesale market test for determining the mandatory list of network elements, and should reinstate its original list of elements on a nationwide basis, revised to incorporate advanced network capabilities and dark fiber.

Respectfully submitted,



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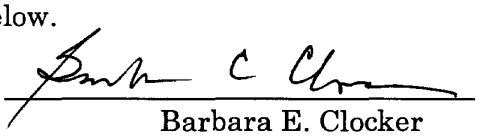
Dated: June 10, 1999

CERTIFICATE OF SERVICE

I, Barbara E. Clocker, hereby certify that on this 10th day of June, 1999, a copy of the Reply Comments of Qwest Communications Corporation filed in CC Docket No. 96-98, was hand delivered to the parties listed below.



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